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13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 [San Jose Division]

17 In re
18 EVANDER FRANK KANE,
19 Debtor.

Case No: 21-50028 SLJ
Chapter 7

22 CENTENNIAL BANK, an Arkansas state
23 chartered bank,
24 Plaintiff,
25 vs.
26 EVANDER FRANK KANE,
27 Defendant.

Adv. No. 21-05016

**PLAINTIFF CENTENNIAL BANK'S EX
PARTE APPLICATION TO SET
JANUARY 10, 2023 HEARING ON
MOTION FOR SUMMARY JUDGMENT
[NO HEARING REQUESTED]**

1 **EX PARTE APPLICATION**

2
3 Plaintiff CENTENNIAL BANK (“Centennial”), by and through its attorneys, and in
4 response to the Court’s Order Denying Ex Parte Application to Specially Set Hearing on Motion
5 for Summary Judgment (“Order Denying Ex Parte”) [AP Doc. No. 37] requests as follows:

6 1. On or about February 22, 2022 the Court issued a Trial Scheduling Order in this
7 adversary proceeding [AP Doc. No. 33] stating that the “Last day to hear Summary Judgment
8 Motion(s) is December 15, 2022”. Scheduling Order, p. 2. There were no conditions on this
9 date, i.e. whether that date was available or not on the Court’s Open Calendar system. In fact, the
10 Open Calendar Procedures state that dates are available even if the Open Calendar System says
11 otherwise stating: “The courtroom deputy for each judge will be available by telephone to
12 schedule hearings not available for setting in the open calendar; or as needed for emergency
13 matters”. [https://www.canb.uscourts.gov/procedure/san-jose/johnson/judge-johnsons-open-](https://www.canb.uscourts.gov/procedure/san-jose/johnson/judge-johnsons-open-calendar-procedure-0)
14 [calendar-procedure-0](https://www.canb.uscourts.gov/procedure/san-jose/johnson/judge-johnsons-open-calendar-procedure-0) , Introduction, Paragraph 2.

15 2. Centennial relied on this date in planning and preparing a Motion for Summary
16 Judgment in this adversary on two of its four Objections to Discharge (Count III -- Section
17 727(a)(3) [No Records] and Count V -- Section 727(a)(5) [Unexplained Loss of Assets]. Based
18 on the Scheduling Order and the Court’s Open Calendar Procedures, Centennial had a honest and
19 good faith belief that the December 15, 2022 was available, or an alternative date would be
20 provided, if for some reason the Court was unavailable. In any case, resolving these claims by
21 summary judgment will promote judicial economy by greatly streamlining what matters actually
22 need a trial to resolve or if a trial would be necessary at all.

23 3. When Centennial discovered that the Court had no open dates available in
24 December, 2022 for motions on any adversary cases (all chapters), it immediately contacted
25 Chambers and was informed to proceed “per applicable rules”. Subsequently, Centennial filed an
26 ex parte application on November 9, 2022 requesting a special set for a hearing on its Summary
27 Judgment Motion on December 15, 2022. The Court issued its Order Denying Ex Parte on
28

1 November 16, 2022 simply denying the request with no alternatives or further instructions.

2 4. Therefore, Centennial's has filed contemporaneously with this application, its
3 complete Motion for Summary Judgment, with a hearing date from the Open Calendar system of
4 January 10, 2023, as the next available date for the Court. Since the Court's next available date is
5 beyond the Scheduling Order's last day for hearing motions for summary judgment (December
6 15, 2022), Centennial submits this ex parte application for approval of the later hearing date.¹

7 5. Since Centennial is requesting an enlargement of time to have a hearing on its
8 Motion for Summary Judgment, Centennial responds to BLR 9006-1(c) requirements as follows.

- 9 (i) The enlargement request is due to the fact that there are no hearing dates
10 available in December, 2022 on Open Calendar, no special set hearing
11 dates available in December, 2022 and January 10, 2023 is the Court's next
12 date available for a hearing on a motion in this adversary proceeding.
- 13 (ii) There have been no other requests for a time enlargement on a hearing on
14 Centennial's Motion for Summary Judgment.
- 15 (iii) Centennial believes that even with the requested extended hearing date on
16 its Motion for Summary Judgment, that there is no need to change any
17 other date on the Scheduling Order or the Trial Date. However, if the
18 Court believes a modification of the Scheduling Order is appropriate,
19 Centennial would adjust accordingly and suggests that a status conference
20 would be helpful in deciding any new dates.
- 21 (iv) Stephen D. Finestone, Esq. of the law firm of Finestone Hays, LLP,
22 counsel of record for the Debtor Evander Kane was contacted on the
23 afternoon Wednesday, November 16, 2022 to discuss the subject matter of
24 this application. Mr. Finestone stated that he would not stipulate to a
25 January 10, 2023 hearing date on Centennial's Motion for Summary
26

27 ¹ If this is unacceptable, Centennial would not oppose the Court directing Kane to file an opposition, Centennial
28 filing a reply and then the Court would rule without a hearing on its motion. The briefing of Centennial's motion for
summary judgment could be completed before the Scheduling Order December 15, 2022 deadline, followed by the
Court's ruling on the papers.

Judgment, nor would he be willing to change any dates in the current
Scheduling Order. See, Califano Supporting Declaration.

6. Based on the circumstances, there is a basis to find good cause to allow
Centennial to enlarge the time to hear its otherwise timely-filed Motion for Summary Judgment
(for the stated deadline in the Scheduling Order of December 15, 2022).

WHEREFORE, Centennial respectfully requests that this Court grant Centennial's Ex
Parte Application and enter an order authorizing the setting of January 10, 2023 for the hearing of
its Motion for Summary Judgment; and grant such other and further relief as the Court deems just
and proper.

DATED: November 17, 2022

NIESAR & VESTAL LLP

By: /s/ **Peter C. Califano**
Peter C. Califano, Esq.
Attorneys for Plaintiff CENTENNIAL BANK,